

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MIKE A TOSCANO,
Petitioner,
v.
KATHLEEN ALLISON,
Respondent.

Case No. [22-cv-06981-VC](#)

**ORDER DISMISSING PETITION FOR
WRIT OF HABEAS CORPUS**

Re: Dkt. No. 6

Mike A. Toscano filed a petition for a writ of habeas corpus seeking access to his prison file. He also filed a motion to proceed in forma pauperis, which is granted. Dkt. No. 6. Toscano's petition is dismissed.

DISCUSSION

Habeas is the “exclusive remedy” for the prisoner who seeks “‘immediate or speedier release’” from confinement. *Skinner v. Switzer*, 562 U.S. 521, 533-34 (2011) (citation omitted). In the Ninth Circuit, if a prisoner seeks alleviation of a prison condition that will not necessarily shorten his sentence, he must bring a civil rights action under 42 U.S.C. § 1983 rather than filing a habeas petition. *Ramirez v. Galaza*, 334 F.3d 850, 859 (9th Cir. 2003). Here, Toscano claims that the California Department of Corrections is refusing his request to receive documents in his file. Dkt. No. 1 at 5. But success on Toscano's challenge would not necessarily lead to his immediate or earlier release from confinement. *See Skinner*, 562 U.S. at 534. Toscano's claim relating to his file does not fall within the “core of habeas corpus” and consequently “must be brought, if at all, under § 1983.” *Nettles v. Grounds*, 830 F.3d 922, 934 (9th Cir. 2016) (citations and internal quotation marks omitted).


CONCLUSION

For the foregoing reasons:

1. Petitioner's motion for leave to proceed in forma pauperis is GRANTED.
2. This action for a writ of habeas corpus is DISMISSED without prejudice to Toscano filing a civil rights action under 42 U.S.C. § 1983, preferably using the court's civil rights complaint form, after he has exhausted California's prison administrative remedies. *See* 42 U.S.C. § 1997e(a).
3. The Clerk is instructed to include a copy of the prisoner civil rights complaint form to Toscano with a copy of this order, along with an in forma pauperis application.
4. This order terminates Docket No. 6.

IT IS SO ORDERED.

Dated: March 9, 2023



VINCE CHHABRIA
United States District Judge